

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket No. 05-
311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

**COMMENTS OF
NORTHERN BERKSHIRE COMMUNITY TELEVISION CORPORATION**

These Comments are filed by Northern Berkshire Community Television Corporation ("NBCTC") in support of the comments filed by the Alliance for Community Media ("Alliance"), the Alliance for Communications Democracy, the National Association of Telecommunications Officers and Advisors ("NATOA"), and other national local government organizations. Like the Alliance, NBCTC believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the benefits of cable franchising and the Public, Educational, and Government Access ("PEG") services in our community.

Cable Franchising in Our Community

Community Information

Northern Berkshire Community Television Corp. Serves over 10 thousand subscribers in the communities of Adams, North Adams, Cheshire and Clarksburg in Berkshire County, Massachusetts. Our franchised cable provider is Adelphia Communications. Our community has negotiated cable franchises since 1982.

Our Current Franchise

Our current franchise began on November 12, 2003 and expires on November 12, 2010.

Our franchise requires the cable operator to pay a franchise fee to our communities in the amount of 5% of the cable operator's gross revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

Our franchise requires the cable operator to provide the following capacity for public, educational, and governmental ("PEG") access channels on the cable system. We currently have 1 channel devoted to public access; 1 channel devoted to educational access; and 1 channel devoted to government access.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: A one time Grant of \$110,000.00 for the purchase of capital equipment used in the production of our programming; A 4% PEG Access fee used for the operation of NBCTC; A 1% PEG Access fee to be used as a Municipal Access and Technology Fund.

Our franchise contains the following requirements regarding emergency alerts: Each of our three Access channels has the ability to be automatically preempted by the Emergency Broadcasting System. In addition local city or town officials in the event of a local emergency or announcement may use our Government Access channel. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

PEG Access Services

Northern Berkshire Community Television Corp. has provided access services in our community for 11 years. The number of access channels we operate is 3. In our most recently completed fiscal year, NBCTC provided over 900 hours of new original local programming to the cable subscribers. The community used our equipment and facility more than 1,500 times for over 6,000 volunteer hours of use. Below are the highlights of our services to the community.

- Video bulletin board with text and graphics for community announcements.
- Coverage of community forums, town hall meetings, and neighborhood meetings.
- Community-produced television programming for special interests (such as - seniors, ethnic and cultural groups, youth, people with disabilities, advocacy groups, health care, etc.)
- Staff-produced television programming on topics of interest to the local community.

- Open channel time specifically for non-profit organizations to air locally-produced programming.
- Open channel time specifically for religious organizations to air locally-produced programming.
- Hotline studios for live, interactive programs that allow local experts to answer viewer questions.
- Grants to produce community programming.
- Production training for neighborhood based community organizations and individuals.
- Video production courses.
- Video production facilities including studio, field, editing, and, if available, remote studio.
- Support to local schools, enhancing learning opportunities for students.
- Technical design, installation, and maintenance support.
- Local political coverage, candidate platform statements and candidate debates during campaign season.
- Distance learning: Programming delivered to public and private institutions, facilitating distribution of for-credit instruction.
- Production, support, and distribution for non-credit classes and job training.
- Distribution of community college and university educational programming.
- Gavel-to-gavel coverage of state legislative sessions, hearings, and other select proceedings.
- Gavel-to-gavel coverage of local government meetings/hearings and other select "local" governmental proceedings.
- Viewer questions answered during live call-in segments by government officials.
- Interactive participation in government meetings at community sites.

- Election night coverage.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

While a franchise is negotiated by the local government as a contract, the process provides notice requirements for the public and the cable operator under state and local law. For instance: The four communities in our service area hosted a joint public hearing with local government officials and representatives from the cable provider prior to the signing of the cable franchise. Public notice was given in the local press and on the NBCTC community bulletin board two weeks prior to the public hearing. This meeting was very well attended and over fifty local public access producers and volunteers were in attendance to support Northern Berkshire Community Television and comment on the tremendous asset NBCTC is to our community.

Competitive Cable Systems

A competitive provider to provide service has never approached our community.

Conclusions

This NPRM is only looking retrospectively at one aspect of the franchising process. We believe that the Commission must look to the future of the public's interest in telecommunication's services. The existing franchising process has provided a basis for public interest services appropriately tailored to each community's local needs. We believe that those services such as PEG should be required of all broadband telecommunications providers.

The local cable franchising process has functioned well in Northern Berkshire County. As the above information indicates, we are experienced at working with cable providers, the local franchise authority, and community interests to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises can also ensure that the cable operator provides the PEG Access services which are responsive to the local community needs as determined through community needs assessments and the local knowledge of educators, local elected officials and local nonprofit organizations.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of primarily local interest.

Local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The Northern Berkshire Community Television Corporation therefore respectfully requests that the Commission take this opportunity to reaffirm the primacy of local government authority over franchising and should make clear that imposition on a new entrant of PEG Access, consumer protections and other public interest services requirements that are equivalent to those of the incumbent does not constitute an unreasonable refusal to award an additional competitive franchise within the meaning of federal law..

The PEG Access model should be strengthened and applied to new technologies, assuring that localism and community participation are not displaced by commercial interests.

The nation would be well served by a policy of "Community Reinvestment" through PEG Access that includes funds and bandwidth and/or spectrum that will be used for public purposes by:

1. Allowing the local community which owns the public rights-of-way to franchise and determine the best use of the community's property;
2. Dedicating ten percent of the public airwaves and capacity on communication facilities that occupy public rights-of-way to PEG use for free speech, diverse points of view, local programs, community based education and political speech;
3. Mandating funding of five percent of gross revenues above and beyond any franchise fee to local authorities from all infrastructure and service providers and spectrum licensees to support PEG equipment, facilities, training and services; and,
4. Making PEG Access universally available to any consumer of advanced telecommunications services capable of full-motion video.

Respectfully submitted,

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